SUPREME COURT OF ALABAMA

OCTOBER TERM, 1998-99

1970366

City of Hoover

v.

Oliver & Wright Motors, Inc.

1970368

City of Albertville et al.

v.

Oliver & Wright Motors, Inc.

Appeals from Montgomery Circuit Court
(CV-92-04)

LYONS, JUSTICE.

Oliver & Wright Motors, Inc., is a business located within the police jurisdiction of the City of Albertville, but outside the city limits. In January 1992, Oliver & Wright filed a class-action complaint challenging the constitutionality of § 11-51-206, Ala. Code 1975, which authorizes a municipality to levy a sales tax on consumers who make purchases from businesses located outside the municipality's corporate limits but within its police juris-

diction.[1] Oliver & Wright sought to represent other businesses similarly located ("the Businesses").

In November 1993, Oliver & Wright amended its complaint and moved the trial court to certify both a plaintiff class and a defendant class. The trial court certified a plaintiff class, defined as follows and named Oliver & Wright as class representative:

> "All businesses within the State of Alabama which operate outside the corporate limits of municipalities but within the police jurisdictions thereof which are or have been charged a local sales tax pursuant to Ala. Code § 11-51-206 (1975)."

The trial court certified a defendant class defined as follows:

> "All municipalities in the State of Alabama which have levied a tax against businesses operating outside their individual city limits but within their police jurisdictions pursuant to Ala. Code § 11-51-206 (1975)."

The defendant class consists of 279 municipalities. Also named as defendants are the Governor, the director of the Department of Finance, the state revenue commissioner, and the state comptroller.

The Businesses contend that § 11-51-206 is unconstitutional because, they say, the tax it authorizes is a revenue-generating tax and, as such, constitutes taxation without representation and the taking of private property without due process of law. The Businesses seek a judgment declaring the statute and the city ordinances based upon it

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[1]In its certificate of service, Oliver & Wright indicated that it had served a copy of its complaint on the attorney general, pursuant to § 6-6-227, Ala. Code 1975, and Rule 44, Ala. R. App. P. See *Ex parte Northport Health Serv., Inc.*, 682 So. 2d 52 (Ala. 1996).

unconstitutional, and they seek also the refund of all taxes collected from them, an injunction prohibiting the Department of Revenue from collecting the tax, and attorney fees.

The defendants filed motions requesting certain evidentiary rulings, decertification of the classes, and a summary judgment. The Businesses also moved for a summary judgment. In November 1997, the trial court ruled in the Businesses' favor as to the evidentiary questions, refused to decertify the classes, and denied all motions for summary judgment. Pursuant to Rule 5, Ala. R. App. P., the Cities of Albertville and Hoover filed petitions for permission to appeal. Albertville also petitioned, in the alternative, for a writ of mandamus directing the trial court to dismiss the complaint on the basis that Oliver & Wright lacks standing to challenge the statute, or, in the alternative, to decertify the classes.

This Court permitted the interlocutory appeal, allowing the parties to address the following issues:

> "(1) Whether a business located outside the corporate limits of a municipality but within its police jurisdiction has standing to challenge the constitutionality of the sales tax imposed on retail consumers pursuant to [§ 11-51-206, Ala. Code 1975].
>
> "(2) Whether municipalities can constitutionally exercise the power delegated to them by the Alabama State Legislature contained in [§ 11-51-206, Ala. Code 1975], which allows them to impose sales taxes on retail consumers for purchases from businesses located outside the corporate limits but within their respective police jurisdictions."

In addition to the Cities of Albertville and Hoover, other appellants in this case are the Cities of Tuscaloosa and Guntersville, and the Towns of Loxley, Notasulga,

Samson, Falkville, Weaver, Luverne, Haleyville, Clayton and Tallassee (all of these are sometimes collectively referred to as "the Municipalities").

I. STANDING

Sales taxes are imposed on consumers, not on retail businesses such as Oliver & Wright. *In re Fox*, 609 F.2d 178 (5th Cir.), *cert. denied, Alabama Dep't of Revenue v. Fox*, 449 U.S. 821 (1980); *Hill v. State*, 50 Ala. App. 587, 281 So. 2d 440 (Ala. Civ. App. 1973). The Municipalities argue that, as a merchant, Oliver & Wright has the role of collecting the sales tax and remitting it to the state; therefore, they argue, because Oliver & Wright did not pay the sales tax, it lacks standing to bring this action challenging the constitutionality of § 11-51-206. See, e.g., *United States v. Jefferson Electric Mfg. Co.*, 291 U.S. 386 (1934). Oliver & Wright argues that it has standing to challenge the constitutionality of § 11-51-206 because it is charged with the duty of calculating, collecting, and remitting the sales tax to the Department of Revenue and because it is held solely responsible for any shortfalls. § 40-23-26(a), Ala. Code 1975.

In order to have standing, a plaintiff must have a real tangible legal interest in the subject matter of the lawsuit. *Eagerton v. Williams*, 433 So. 2d 436 (Ala. 1983). "'In Alabama, although retail sales tax is levied against the ultimate consumer, the burden is on the seller to collect from the purchaser the amount of tax due on a sale, and the State looks to the seller for the tax.'" *In re Peiffer*, 126 B.R. 364, 367 (Bankr. N.D. Ala. 1991) (quoting *Merriwether v. State*, 252 Ala. 590, 593, 42 So. 2d 465, 466 (1949)). We agree with Oliver & Wright that the imposition upon it of the burden to calculate, collect, and remit the tax under penalty of liability for any errors provides it with standing to challenge the constitutionality of the law that imposes that burden.

II. CONSTITUTIONALITY OF THE STATUTE

The legislature has authorized and empowered the state's municipalities to impose sales taxes outside their corporate limits, but within their police jurisdictions. Section 11-51-206, Ala. Code 1975, reads:

> "Levy of tax outside corporate limits.
>
> "The council or other governing body shall have the authority to levy and assess by ordinance within the police jurisdiction of any said city or town all taxes authorized by this article [including sales taxes]; provided, that said levy and assessment shall not exceed one-half the amount levied and assessed for like businesses, sales or uses conducted within the corporate limits, fees and penalties excluded."

Oliver & Wright contends that this Court has never held it constitutional for the legislature to authorize a municipality to levy a revenue-generating tax, as opposed to a regulatory tax, on entities outside its borders. According to Alabama law, Oliver & Wright argues, the legislature does not have the authority to allow a municipality to levy a revenue-generating tax on businesses that do not conduct their operations within the corporate limits of the municipality. Relying on *White v. City of Decatur*, 225 Ala. 646, 144 So. 873 (1932), Oliver & Wright insists that the levy of such a tax amounts to taxation without representation and the taking of property without due process of law. Furthermore, Oliver & Wright contends, citing *Hawkins v. City of Prichard*, 249 Ala. 234, 30 So. 2d 659 (1947), *overruled in part on other grounds, State Dep't of Revenue v. Reynolds Metals Co.*, 541 So. 2d 524 (Ala. 1988), municipalities are not authorized under the Constitution to levy a license tax on businesses located within their police jurisdiction but outside their city limits for the purpose of raising general revenue, either directly or indirectly.

In response, the Municipalities argue that the sales tax authorized by § 11-51-206 is constitutionally valid as an exercise of the plenary power of the State of Alabama that the legislature has properly delegated to municipalities. Before 1969, when § 11-51-206 was enacted, the imposition of any "sales tax" in a police jurisdiction was possible only under the licensing authority of § 11-51-91. In 1969, the legislature authorized municipalities to assess true sales and use taxes in their police jurisdictions. The state may delegate to municipal corporations the power to levy fees and taxes coextensive with the state. See *Al Means, Inc. v. City of Montgomery*, 268 Ala. 31, 104 So. 2d 816 (1958). The municipal taxing power so granted by the state can extend as far as the state, by express grant of authority, provides for it to extend. *Id.* If the state has the authority to directly levy a sales tax on consumer transactions occurring within a municipality's police jurisdiction, see § 40-23-1 et seq., it should follow that the state also has the authority to enable a municipality to levy a sales tax such as that authorized by § 11-51-206. Therefore, we are not presented with a statute that grants only regulatory or licensing authority but under which a municipality improperly attempts to raise general revenues. See, e.g., *Alabama Power Co. v. City of Carbon Hill*, 234 Ala. 489, 175 So. 289 (1937), *overruled in part on other grounds, State Dep't of Revenue v. Reynolds Metals Co.*, 541 So. 2d 524 (Ala. 1988); *Van Hook v. City of Selma*, 70 Ala. 361 (1881). Cf. *City of Mountain Brook v. Beaty*, 349 So. 2d 1097 (Ala. 1977).

We turn to Oliver & Wright's contention that statutes such as § 11-51-206 deny due process of law, contrary to the United States and Alabama Constitutions. This issue was before the United States Supreme Court in *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978), in the context of the Due Process and Equal Protection Clauses of the 5th and 14th Amendments to the United States Constitution.

There, the plaintiffs challenged the authority of Alabama municipalities to impose license fees on businesses located within the police jurisdiction without simultaneously extending the right to vote in municipal elections. The United States Supreme Court upheld Alabama's statutory scheme as a reasonable exercise of the state's authority to regulate municipalities and the areas just outside their corporate limits. The Supreme Court determined that the state legislature has a legitimate interest in seeing that the people in a police-jurisdiction area do not go without basic municipal services, and that it was not unreasonable for the Alabama legislature to require residents of a police jurisdiction to contribute through license fees to the expense of providing those services.

As the City of Hoover argued in it brief, it is clear that a municipality's authority conferred by § 11-51-206 to impose a sale tax within its police jurisdiction bears a rational relationship to a legitimate interest of the state legislature. We find persuasive the City of Hoover's argument that any of the following reasons would support a conclusion that the legislature, in authorizing the tax at issue here, was acting reasonably and responsibility. First, the legislature reasonably could have determined that if a municipality was not authorized to impose a sales tax in its police jurisdiction, local merchants might opt to conduct their businesses just outside the city limits, thus avoiding the burden of a sales tax while simultaneously enjoying most, if not all, of the benefits provided by the municipality within its city limits. Second, the legislature reasonably could have assumed that those businesses engaging in commercial activities within municipal police jurisdictions enjoy tangible and intangible benefits that result from those businesses' close proximity to the municipality, and that those benefits are comparable, and frequently identical, to those enjoyed by businesses oper-

ating within the corporate limits; and that this fact makes it appropriate for those businesses within the police jurisdiction to share directly in the burden of financing the expenses generally associated with providing those benefits. Third, the legislature reasonably could have concluded that authorizing a municipality to access an expanded sales-tax base would allow the per capita sales-tax burden to be shouldered more equitably by all those benefitting from municipal revenue. Fourth, the legislature reasonably could have assumed that without an expanded sales-tax base, a municipality would be more likely to annex adjoining areas solely for the purpose of raising additional revenue, rather than for the purpose of supporting the growth of its citizenry.

The Supreme Court also concluded in *Holt Civic Club* that the statutory limitation on license fees for businesses operating in a police-jurisdiction area to one-half the amount required of businesses operating in the city limits assured the police-jurisdiction residents that they would not be victimized by city government. Section 11-51-206 contains a similar statutory limitation on a sales tax imposed within a police jurisdiction, but outside the city limits, to one-half the amount required in the city limits.

Moreover, the Supreme Court determined in *Holt Civic Club* that the right to vote in elections of representatives to the state legislature protected the taxpayers from taxation without representation. Likewise, Oliver & Wright is not taxed without representation, because its principals are entitled, if they so choose, to participate in the elections of members of the legislative body that adopted the challenged statute.

The United States Supreme Court, in *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981), while not specifically dealing with taxation within a police jurisdic-

tion, addressed the constitutionality of general-revenue taxation by a state:

> "This Court has indicated that States have considerable latitude in imposing general revenue taxes. The Court has, for example, consistently rejected claims that the Due Process Clause of the Fourteenth Amendment stands as a barrier against taxes that are 'unreasonable' or 'unduly burdensome.' Moreover, there is no requirement under the Due Process Clause that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity. Instead, our consistent rule has been:
>
> > "'Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.
> >
> > "'A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good.'"

453 U.S. at 622-23 (quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-23 (1937)) (citations omitted).

While the United States Supreme Court's interpretation of the Due Process Clause in the 14th Amendment to the United States Constitution is not binding on this Court when this Court is interpreting the due process clause in the Alabama Constitution, that Court's reasoning can inform our judgment. *Pickett v. Matthews*, 238 Ala. 542, 192 so. 261 (1939). On the due-process issue presentee in this present case, we find the reasoning of the United States Supreme Court in *Holt Civic Club* and *Commonwealth Edison* persuasive. We therefore conclude that § 11-51-206 has not been shown to deny the due process guaranteed by the United States and Alabama Constitutions. To the extent that the dictum in *White v. City of Decatur*, endorsed by dictum in *City of Mountain Brook v. Beaty*, and relied on here by Oliver & Wright, indicates otherwise, it is hereby rejected.

III. CONCLUSION

The trial court's order denying the summary judgment motions filed by the Municipalities is reversed, and the cause is remanded with directions to enter a judgment in favor of the Municipalities. The City of Albertville's petition for a writ of mandamus is denied as moot.

1970366 — REVERSED AND REMANDED WITH DIRECTIONS.

1970368 — REVERSED AND REMANDED WITH DIRECTIONS; PETITION FOR WRIT OF MANDAMUS DENIED.

Hooper, C. J., and Maddox, Houston, Cook, See, and Brown,* JJ., concur.

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*Although Justice Brown was not a member of this Court when these cases were orally argued, she has listened to the tape of oral argument.

§ 11-51-206. Levy of tax outside corporate limits.

The council or other governing body shall have the authority to levy and assess by ordinance within the police jurisdiction of any said city or town all taxes authorized by this article; provided, that said levy and assessment shall not exceed one-half the amount levied and assessed for like businesses, sales or uses conduction within the corporate limits, fees and penalties excluded. (Acts 1969, No. 917, p. 1653, § 7.)

Act No. 917 H. 1307—McLain

AN ACT

Relating to all incorporated cities and towns within the State of Alabama; authorizing all cities and towns to provide by ordinance for the levy and assessment of sales taxes, parallel to the State levy of sales taxes as levied by Act No. 100, H. 94, Second Special Session 1959, as amended; providing that all such taxes levied or assessed shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, penalties, fines, punishments, and deductions, as are provided by Act No. 100, H. 94, Second Special Session 1959, as amended; authorizing said cities and towns to provide by ordinance for the levy and assessment of an excise tax or use tax parallel to the State levy and assessment of excise or use taxes, as levied by Article 11, Chapter 20, Title 51, Code of Alabama 1940, as amended; providing that the levy and assessment of all said excise taxes and use taxes shall be subject to all definitions, exceptions, exemptions, requirements, provisions, penalties, fines, punishments and deductions, as are provided by Article 11, Chapter 20, Title 51, Code of Alabama 1940, as amended; providing that said cities and towns shall from time to time adopt by ordinance such rules and regulations for making returns and for ascertainment, assessment, and collection of any taxes levied as it may deem necessary to enforce these provisions; providing that the Council or other governing body may adopt in whole or in part any rules and regulations which may be promulgated by the State Department of Revenue or may modify and amend the same, subject to the discretion of the Council or other governing body; providing that the Council or other governing body shall have the authority to provide by ordinance for the rate of said tax, providing that the same may be levied and assessed in whole or

in part, in lieu of any privilege license tax based on gross receipts which at the time of said levy, is otherwise provided for by ordinance, pursuant to Title 37, Sec. 735, Code of Alabama 1940; providing that any previous pledge of the proceeds collected from a privilege license tax levied by ordinance, pursuant to Title 37, Sec. 735, Code of Alabama 1940, shall have full force and effect as to any levy or assessment made pursuant to this Act; providing for the levy and assessment of all taxes herein authorized within the police jurisdiction of any said city or town; providing that the Council or other governing body may by Resolution provide for the administrtion and collection of all taxes levied and assessed under the provisions of this Act by the State Department of Revenue under the provisions and procedures provided for by Act No. 203, H. 99, Special Session 1965.

Be It Enacted by the Legislature of Alabama:

Section 1. The Council or other governing body of all incorporated cities and towns within the State of Alabama is hereby authorized and empowered to provide by ordinance for the levy and assessment of sales taxes, parallel to the State levy of sales taxes, as levied by Act No. 100, H. 94, Second Special Session 1959, as amended, or as the same may hereafter be amended, except where inapplicable or where herein otherwise provided, and further provided that no city or town shall be authorized to levy any such tax against the Alcoholic Beverage Control Board of the State of Alabama in the sale of alcoholic beverages.

Section 2. All taxes levied or assessed by any city or town, pursuant to the provisions of Section 1 hereof, shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, penalties,

fines, punishments, and deductions as are provided by Act No. 100, H. 94, Second Special Session 1959, as amended, or as the same may hereafter be amended, except where inapplicable or where herein otherwise provided.

Section 3. The Council or other governing body of all incorporated cities and towns within the State of Alabama is hereby authorized and empowered to provide by ordinance for the levy and assessment of an excise tax or use tax parallel to the state levy and assessment of excise or use taxes as levied by Article 11, Chapter 20, Title 51, Code of Alabama 1940, as amended, or as the same may hereafter be amended, except where inapplicable or where herein otherwise provided.

Section 4. All taxes levied or assessed by any city or town pursuant to provisions of Section 3 hereof shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, penalties, fines, punishments, and deductions, as are provided by Article 11, Chapter 20, Title 51, Code of Alabama 1940, as amended, or as the same may hereafter be amended, except where inapplicable or where herein otherwise provided.

Section 5. The Council or other governing body making a levy or assessment of taxes under the provisions of this Act, shall from time to time adopt by ordinance such rules and regulations for making returns and for ascertainment, assessment and collection of any taxes levied as it may deem necessary to enforce its provisions, and upon request shall furnish any taxpayer with a copy of such rules and regulations. The Council or other governing body may adopt in whole or in part any rules and regulations which may be promulgated by the State Department of Revenue, or may modify and amend the same at the discretion of said Council or other governing body.

Section 6. The Council or other governing body levying or assessing taxes authorized by this Act shall have the authority to provide by ordinance for the rate of said tax. Said Council or other governing body may provide in any ordinances levying or assessing said tax that the same is levied and assessed in whole or in part, in lieu of any privilege license tax based on gross receipts which at the time of said levy is otherwise provided for by ordinance, pursuant to Title 37, Section 735, Code of Alabama 1940. In all cases where said levy and assessment made pursuant to this Act is required by ordinance, any previous pledge of the proceeds collected from a privilege license tax levied by ordinance pursuant to Title 37, Section 735, Code of Alabama 1940, shall have full force and effect as to any levy or assessment made pursuant to this Act.

Section 7. The Council or other governing body shall have the authority to levy and assess by ordinance within the police jurisdiction of any said city or town, all taxes authorized by this Act, provided that said levy and assessment shall not exceed 1/2 the amount levied and assessed for like businesses, sales, or uses, conducted within the corporate limits, fees and penalties excluded.

Section 8. The Council or other governing body may pass an ordinance or resolution requiring the State Department of Revenue to administer and collect any taxes levied and assessed under the provisions of this Act. In all cases where the Council or other governing body provides by ordinance or resolution for the administration and collection of any taxes levied under the provisions of this Act by the State Department of Revenue, said administration and collections shall be made under the same provisions and procedures provided for by Act No. 203, Special Session 1965.

Section 9. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part or parts which remain.

Section 10. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming law.

Approved September 12, 1969.

Time: 7:05 P.M.

Act No. 100

H. 94—Nichols, Meade, Boyd, Dodd, Roberts, Self, Cates, Johnson (Hardaway), Johnston (Leonard), Franklin

AN ACT

To raise revenue; levying a privilege or license tax against persons on account of certain business activities; prescribing the rate thereof and exemptions therefrom; superseding Article 10 of Chapter 20, Title 51, Code of Alabama 1940, as amended and supplemented.

Be It Enacted by the Legislature of Alabama:

. . .

Section 2. There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

. . .

Approved August 18, 1959.
Time: 3:15 P.M.

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY

OLIVER & WRIGHT MOTORS, INC., a corporation, individually and as representative of the Plaintiff's class.	*	
Plaintiff,	*	
vs.	*	CIV. NO. _____
CITY OF ALBERTVILLE; GUY HUNT in his official capacity as Governor of the State of Alabama; JAMES ROWELL in his official capacity as Acting Director of Finance for the State of Alabama; ROBERT CHILDREE, in his official capacity as Comptroller of the State of Alabama;	*	
Defendants.	*	

COMPLAINT

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Alabama engaged in the business of selling used cars. Plaintiff's business is located outside the city limits of Albertville but within the police jurisdiction of Albertville.

2. Defendant City of Albertville is a municipality organized and existing pursuant to the laws of the State of Alabama.

3. Defendant Guy Hunt is named in his official capacity as Governor of the State of Alabama, and as such he is charged by law with the duty of taking care that all laws are faithfully executed; Defendant James Rowell is named in his official capacity as Acting Director of Finance for the State of Alabama, and as such he exercises authority over monies collected and distributed by the Department of Revenue of the State of Alabama; Defendant Robert Childree is named in his official capacity as Comptroller for the State of Alabama, and as such he exercises authority over monies distributed from the general fund of the State of Alabama.

PLAINTIFF CLASS ACTION AVERMENTS

4. This action is brought by plaintiff as a class action, on its own behalf and on behalf of all others similarly situated under provisions of Rule 23 of the Alabama Rules of Civil Procedure, for damages and injunctive relief.

5. The class represented by plaintiff operates businesses outside the corporate limits of Defendant Albertville but within the police jurisdiction of the Defendant Albertville and are charged a sales, use and/or excise tax by Albertville. The sales, use and/or excise taxes levied against members of the class was enacted by Albertville pursuant to Ala. Code § 11-51-206 (1975).

6. The exact number of members of the class is not presently known, but the class is so numerous that joinder of individual members is impracticable.

7. There are common questions of law and fact in this action that relate to or affect the rights of each member of the class — each member of the class was charged the taxes pursuant to a local ordinance which was enacted pursuant to the state statute, the constitutionality of which similarly affects the rights of each member of the

class — and the relief sought is common to the entire class as set out below.

8. The claims of plaintiff, which is a representative of the class described above, are typical of the claims of all members of the class.

9. The named plaintiff is the representative party for the class and is able to and will fairly and adequately protect the interests of the class.

10. Attorneys for plaintiff are experienced and capable in class action litigation and attacking the constitutionality of state laws and have successfully represented claimants in class action litigation attacking the constitutionality of state laws.

11. This action is properly maintained as a class action under Rule 23(b)(1) in that:

(a) the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants;

(b) The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

12. Alternatively, this action is properly maintained as a class action under Rule 23(b)(2) in that the defendants have acted consistently in that they have acted pursuant to a state statute, and the actions of the defendants are applicable to the class as a whole, thereby making appropriate final injunctive relief with respect to the entire class as a whole;

ALLEGATIONS OF FACT

13. Ala. Code § 40-23-2 (1975) sets forth a tax levied on gross receipts tax (sales tax) for the State of Alabama. This tax is a revenue generating tax and not regulatory.

14. Ala. Code § 11-51-200 (1975), authorizes municipalities to provide for the levy of sales taxes, parallel to the levy of state sales taxes established by §§ 40-23-1, 40-23-2, 40-23-4, 40-23-6 through 40-23-32.

14. Ala. Code § 11-51-201 (1975), makes all such taxes levied by the municipalities subject to all definitions, exemptions penalties, fines, deductions, etc. provided in the state statues pertaining to sales taxes.

15. Ala. Code § 11-51-206 (1975), gives the municipalities the power to levy this sales tax within their respective police jurisdictions, provided said levy does not exceed 1/2 of the amount levied on businesses within the City.

16. Ala. Code § 11-51-207 (1975) allows municipalities to pass an ordinance requiring the State Department of Revenue to administer and collect the tax levied. The administration and collection by the state must be in accordance with sections §§ 11-51-180 through 11-51-185.

17. A certified copy of the ordinance is filed with the State Department of Revenue. The Department of Revenue then collects the tax, deducts a cost for collection, and pays the balance to the municipalities at the first of each month.

18. Ala. Code § 11-51-206, which authorizes municipalities to levy sales, use and excise taxes in police jurisdictions is unconstitutional because the tax is a revenue generating tax and therefore constitutes taxation without representation and the taking of property without due process of law.

19. Defendant Albertville passed an ordinance pursuant to Ala. Code § 11-51-206 which levies sales, use and excise taxes in its police jurisdiction. Defendant

Albertville further passed an ordinance pursuant to Ala. Code § 11-51-207 (1975) authorizing the State Department of Revenue to collect the tax.

20. Plaintiff moved from within the city limits of Defendant Albertville to within the police jurisdiction of the Defendant Albertville. After the move, the taxes Plaintiff was to pay became confused and the State Department of Revenue entered a final assessment for sales taxes not paid by the Plaintiff.

21. The local ordinance passed by Defendant Albertville is unconstitutional because the tax is a revenue generating tax and therefore constitutes taxation without representation and the taking of property without due process of law.

20. The collection of the tax by the State Department of Revenue and the retention of some of the funds collected — which are paid into the general fund — is unlawful because the tax is unconstitutional.

RELIEF SOUGHT

21. Based upon the foregoing allegations and averments, plaintiffs pray for the following relief by appropriate orders from this Honorable Court:

(a) an order pursuant to A.R.C.P. Rule 23(c)(1) certifying this action as a class action, with further orders as deemed necessary and proper by the Court under the premises as the Court deems necessary and proper;

(b) a judgment declaring §§ 11-51-206 *Code of Alabama,* (1975) to be unconstitutional;

(c) an order refunding all taxes collected from plaintiff and members of the class by the Alabama Department of Revenue and/or Defendant Albertville;

(d) an order declaring the final assessment against Plaintiff to be null and void;

(e) a permanent injunction prohibiting the Department of Revenue and Defendant Albertville from collecting the tax against businesses within the police jurisdiction of the City of Albertville;

(f) an award of attorneys fees pursuant to equitable common fund principles to attorneys for plaintiff and the class certified by the Court; and

(g) an award of such other, further and different relief as the class may be entitled.

NOTICE TO ATTORNEY GENERAL

Plaintiffs hereby certify they have sent a copy of this complaint, seeking to declare unconstitutional a statute of the State of Alabama to Honorable James Evans, Attorney General for the State of Alabama, by certified mail on the date this petition was filed.

/s/ William J. Baxley
WILLIAM J. BAXLEY

/s/ Charles A. Dauphin
CHARLES A. DAUPHIN
Baxley, Dillard & Dauphin
Attorneys for Plaintiffs
2000 16th Avenue South
Birmingham, Alabama 35205
(205) 939-0995

Plaintiffs' Address
Oliver & Wright Motors, Inc.
Route 2, Box 117
Albertville, AL 35950

Please serve Defendants at:

City of Albertville
c/o Mayor Arthur Baugh
201 South Broad
Albertville, AL 35940

Robert Childree
110 State House
11 South Union Street
Montgomery, AL 36130

Guy Hunt
217 State House
11 South Union Street
Montgomery, Alabama 36130

James Rowell
207 State House
11 South Union Street
Montgomery, Alabama 36130

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY

OLIVER & WRIGHT MOTORS, INC., a corporation, individually and as representative of the Plaintiff's class.	*	
Plaintiff,	*	
	*	CIV. NO. CV
vs.	*	92-04-PR
CITY OF ALBERTVILLE; individually and as representative of the Defendant class JIM FOLSOM in his official capacity as Governor of the State of Alabama; JAMES WHITE in his official capacity as Director of Finance for the State of Alabama; ROBERT CHILDREE, in his official capacity as Comptroller of the State of Alabama; GEORGE E. MINGLEDORFF, III in his official capacity as Revenue Commissioner	*	
Defendants.	*	

AMENDED COMPLAINT

The Plaintiff amends his complaint by substituting Governor Jim Folsom in his official capacity for Guy Hunt and by seeking a defendant class comprised of all cities which have passed a local sales tax ordinance based

on § 11-51-206 Code of Alabama (1975). Plaintiff intends this Amended Complaint to supplant the original complaint and amendments thereto.

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Alabama engaged in the business of selling used cars. Plaintiff's business is located outside the city limits of Albertville but within the police jurisdiction of Albertville.

2. Defendant City of Albertville is a municipality organized and existing pursuant to the laws of the State of Alabama which has passed and enforced a local sales tax and excise and use tax on businesses outside the city limits but within the police jurisdiction based on the state sales tax statutes.

3. Defendant Jim Folsom is named in his official capacity as Governor of the State of Alabama, and as such he is charged by law with the duty of taking care that all laws are faithfully executed; Defendant James White is named in his official capacity as Director of Finance for the State of Alabama, and as such he exercises authority over monies collected and distributed by the Department of Revenue of the State of Alabama; Defendant Robert Childree is named in his official capacity as Comptroller for the State of Alabama, and as such he exercises authority over monies distributed from the general fund of the State of Alabama. Defendant George E. Mingledorff, III, is named in his official capacity as Commissioner of the Department of Revenue, and as such he exercises authority over the collection of the sales taxes.

PLAINTIFF CLASS ACTION AVERMENTS

4. This action is brought by plaintiff as a class action, on its own behalf and on behalf of all others similarly

situated under provisions of Rule 23 of the Alabama Rules of Civil Procedure, for damages and injunctive relief.

5. The class represented by plaintiff operates businesses outside the corporate limits of cities in the State of Alabama but within the police jurisdiction of the cities and are charged a local sales tax based on the State sales tax. The sales taxes levied against members of the class was enacted by the cities pursuant to Ala. Code § 11-51-206 (1975).

6. The exact number of members of the class is not presently known, but the class is so numerous that joinder of individual members is impracticable.

7. There are common questions of law and fact in this action that relate to or affect the rights of each member of the class—each member of the class was charged the taxes pursuant to a local ordinance which was enacted pursuant to the state statute, the constitutionality of which similarly affects the rights of each member of the class—and the relief sought is common to the entire class as set out below.

8. The claims of plaintiff, which is a representative of the class described above, are typical of the claims of all members of the class.

9. The named plaintiff is the representative party for the class and is able to and will fairly and adequately protect the interests of the class.

10. Attorneys for plaintiff are experienced and capable in class action litigation and attacking the constitutionality of state laws and have successfully represented claimants in class action litigation attacking the constitutionality of state laws.

11. This action is properly maintained as a class action under Rule 23(b)(1) in that:

(a) the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants;

(b) The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

12. Alternatively, this action is properly maintained as a class action under Rule 23(b)(2) in that the defendants have acted consistently in that they have acted pursuant to a state statute, and the actions of the defendants are applicable to the class as a whole, thereby making appropriate final injunctive relief with respect to the entire class as a whole;

DEFENDANT CLASS ACTION AVERMENTS

13. This action is brought by plaintiffs as a defendant class action against the City of Albertville and against all municipalities within the State of Alabama which enacted local sales tax ordinances pursuant to Ala. Code § 11-51-206 (1975), under provisions of Rule 23 of the Alabama Rules of Civil Procedure.

14. The class of defendants represented by Defendant City of Albertville are all the municipalities within the State of Alabama which enacted local sales tax ordinances pursuant to Ala. Code § 11-51-206 (1975).

15. The number of members of the defendant class is so numerous that joinder of individual members is impracticable.

16. There are common questions of law and fact in this action that relate to or affect the rights of each member of the defendant class—each member of the class enacted and enforced a local sales tax ordinance which placed a sales tax on businesses outside their city limits but within their police jurisdictions based on Code § 11-51-206, the constitutionality of which similarly affects the rights of each member of the class—and the relief sought is common to the entire class as set out below.

17. The defenses of the defendant city, which is representative of the defendant class described above, are typical of all members of the class.

18. The representative defendants are the representative parties for the class and are able to and will fairly and adequately protect the interests of the class.

19. This action is properly maintained against a defendant class under Rule 23(b)(1) in that:

(a) the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants;

(b) The prosecution of separate actions against individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

20. Alternatively, this action is properly brought against a defendant class under Rule 23(b)(3) in that questions of law or fact common to the members of the class predominate over any questions affecting only indi-

vidual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

ALLEGATIONS OF FACT

21. Ala. Code § 40-23-2 (1975) sets forth a tax levied on gross receipts tax (sales tax) for the State of Alabama. This tax is a revenue generating tax and not regulatory.

22. Ala. Code § 11-51-200 (1975), authorizes municipalities to provide for the levy of sales taxes, parallel to the levy of state sales taxes established by §§ 40-23-1, 40-23-2, 40-23-4, 40-23-6 through 40-23-32.

23. Ala. Code § 11-51-201 (1975), makes all such taxes levied by the municipalities subject to all definitions, exemptions penalties, fines, deductions, etc. provided in the state statutes pertaining to sales taxes.

24. Ala. Code § 11-51-206 (1975), gives the municipalities the power to levy this sales tax within their respective police jurisdictions, provided said levy does not exceed 1/2 of the amount levied on businesses within the City.

25. Ala. Code § 11-51-207 1975 allows municipalities to pass an ordinance requiring the State Department of Revenue to administer and collect the tax levied. The administration and collection by the state must be in accordance with sections §§ 11-51-180 through 11-51-185.

26. A certified copy of the ordinance is filed with the State Department of Revenue. The Department of Revenue then collects the tax, deducts a cost for collection, and pays the balance to the municipalities at the first of each month.

27. Ala. Code § 11-51-206, which authorizes municipalities to levy sales, use and excise taxes in police jurisdictions is unconstitutional because the tax is a revenue generating tax and therefore constitutes taxation without

representation and the taking of property without due process of law.

28. Defendant Albertville passed an ordinance pursuant to Ala. Code § 11-51-206 which levies sales, use and excise taxes in its police jurisdiction. Defendant Albertville further passed an ordinance pursuant to Ala. Code § 11-51-207 (1975) authorizing the State Department of Revenue to collect the tax.

29. Plaintiff moved from within the city limits of Defendant Albertville to within the police jurisdiction of the Defendant Albertville. After the move, the taxes Plaintiff was to pay became confused and the State Department of Revenue entered a final assessment for sales taxes not paid by the Plaintiff.

30. The local ordinance passed by Defendant Albertville is unconstitutional because the tax is a revenue generating tax and therefore constitutes taxation without representation and the taking of property without due process of law.

31. The collection of the tax by the State Department of Revenue and the retention of some of the funds collected — which are paid into the general fund — is unlawful because the tax is unconstitutional.

RELIEF SOUGHT

32. Based upon the foregoing allegations and averments, plaintiffs pray for the following relief by appropriate orders from this Honorable Court:

(a) an order pursuant to A.R.C.P. Rule 23(c)(1) certifying this action as a class action, with a plaintiff and defendant class, with further orders as deemed necessary and proper by the Court under the premises as the Court deems necessary and proper;

(b) a judgment declaring §§ 11-51-206 *Code of Alabama,* (1975) to be unconstitutional;

(c) an order refunding all taxes collected from plaintiff and members of the class by the Alabama Department of Revenue, Defendant Albertville and individual members of the Defendant class;

(d) an order declaring the final assessment against Plaintiff to be null and void;

(e) a permanent injunction prohibiting the Department of Revenue and members of the Defendant class from collecting the tax against businesses within the police jurisdictions.

(f) an award of attorneys fees pursuant to equitable common fund principles to attorneys for plaintiff and the class certified by the Court; and

(g) an award of such other, further and different relief as the class may be entitled.

NOTICE TO ATTORNEY GENERAL

Plaintiffs hereby certify they have sent a copy of this complaint, seeking to declare unconstitutional a statute of the State of Alabama to Honorable James Evans, Attorney General for the State of Alabama, by certified mail on the date the original complaint was filed.

/s/ William J. Baxley
WILLIAM J. BAXLEY

/s/ Charles A. Dauphin
CHARLES A. DAUPHIN
Baxley, Dillard & Dauphin
Attorneys for Plaintiffs
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(205) 939-0995

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 3rd day of November, 1993 served a copy of the foregoing pleading on all counsel of record in this cause by placing same in the U.S. Mail, postage prepaid and properly addressed to:

Jerry Carpenter, Esq.
State of Alabama
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/s/ Charles A. Dauphin
OF COUNSEL

§ 11-51-91. Establishment and collection of license for conduct of business, trade or profession outside corporate limits of municipality.

Any city or town within the State of Alabama may fix and collect licenses for any business, trade or profession done within the police jurisdiction of such city or town but outside the corporate limits thereof; provided, that the amount of such licenses shall not be more than one half the amount charged and collected as a license for like business, trade or profession done within the corporate limits of such city or town, fees and penalties excluded; and provided further, that the total amount of such licenses shall not be in an amount greater than the cost of services provided by the city or town within the police jurisdiction; and provided further, no calculation is required to be made by the municipal officials for the cost of services to any particular business or classification of businesses within the police jurisdiction so long as the total amount of such licenses collected in the police jurisdiction shall not be in an amount greater than the cost of services provided by the city or town to the police jurisdiction; provided further, that when the place at which any such business, trade or profession is done or carried on is within the police jurisdiction of two or more municipalities which levy the licenses thereon authorized by this section, such licenses shall be paid to and collected by that municipality only whose boundary measured to the nearest point thereof is closest to such business, trade or profession; and provided further, that this section shall not have the effect of repealing or modifying the limitations in this division relating to railroad, express companies, sleeping car companies, telegraph companies, telephone companies and public utilities and insurance companies and their agents. This section shall be given a liberal construction to effectuate its purpose and meaning. (Acts 1927, No. 580, p. 674; Acts 1932, Ex.

Sess., No. 235, p. 240; Code 1940, T. 37, § 733; Acts 1943, No. 502, p. 477; Acts 1986, No. 86-427, p. 790.)